IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7161 of 2005

Between:

D.R. Venkatesh, S/o D.R. Iyyangar,
M/s SOM Phyto Pharma India Ltd, Plot No. 154/A5,
Sy.No. 172/U, SVCIE, IDA, Bollaram,
Medak District.

..... PETITIONER

AND

1 The Regional Provident Fund Commissioner Employees Provident Fund Office, 2nd Floor,
Bhavishyanidhi Bhavan, Barkathpura, Hyderabad.
2 The Assistant Provident Fund Commissioner (Recovery), Sub-Accounts Office, #12-1, Susheeram Complex, Patancheru, Medak District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus: a) Declaring the action of the 2nd respondent in issuing the auction sale notice vide proceedings No. AP32402/SAO/PTC/ENF/(Recy)/2005 dated 3-3-2005 as illegal and arbitrary. b) To direct the respondents to re-assess the dues payable by the petitioner for a period from 9/97 to 3/2000.

Counsel for the Petitioner:MR.M.SREERAMULU REDDY

Counsel for the Respondent Nos.1 and 2: MR.R.N.REDDY

The Court, at the stage of admission,made the following :

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ORDER:

This writ petition is filed seeking a declaration that the action of the second respondent in issuing the auction notice dated 03.03.2005 is arbitrary and illegal.

The petitioner claims to be the Managing Director of M/s. Som Phyto Pharma India Limited. It is pleaded that the said company has become a sick industrial company and the proceedings are pending before A.A.I.F.R. Under the impugned auction notice dated 3-3-2005 the movable/immovable properties of the company which were attached under Section 8-B(1)(a) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 are proposed to be sold on 5-4-2005 on as it is where it is basis by the 2nd respondent herein.

It is not in dispute that the second respondent herein passed an order under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the Act"), as long back as on 04.09.2000 determining the provident fund dues payable by the petitioner at Rs.12,13,157/- for the period from September, 1997 to March, 2000. Thereafter, by another order dated 28-5-2003 made under Section 7-A of the Act the petitioner was held liable to pay a further sum of Rs.70,456/- towards P.F. dues for the period from April, 2000 to March, 2003. Admittedly, the petitioner has not preferred any appeals against those orders and the said orders have become final.

The counter-affidavit filed on behalf of the respondents shows that the respondents have earlier issued a demand notice dated 20.12.2000 and aggrieved by the same the petitioner filed W.P.No.451 of 2001 claiming immunity under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "the SIC Act"). The said writ petition was dismissed by this Court by order dated 30.08.2001 holding that the prohibition contained in Section 22 of the SIC Act has no application to the recovery of provident fund dues. The said order was also confirmed by the

It is also relevant to note that the respondents have subsequently issued a notice calling upon the petitioner to show cause as to why he should not be committed to civil prison in execution of certificate issued by the authorized officer of the first respondent under Section 8-C(2) of the Act. Challenging the same, the petitioner filed W.P.No.460 of 2004 and the said writ petition was disposed of by this Court by an elaborate order dated 06.08.2004 holding that the respondents are not entitled to initiate proceedings both for attachment and arrest simultaneously. Accordingly, the notice impugned therein was set aside and the writ petition was disposed of leaving it open to the respondents to proceed with the sale of the properties attached, in accordance with law.

Learned counsel for the respondents states that the impugned notice dated 03.03.2005 has been issued consequent on the observations made by this Court and since the petitioner is a chronic defaulter and failed to pay the amounts due in spite of several opportunities, the interference of this Court at this stage is not at all warranted.

I have heard the learned counsel for both the parties at length and perused the material on record.

The law is well settled that the establishment cannot seek any immunity from the proceedings passed under the Act merely on the ground that the proceedings are pending under the S.I.C. Act. That apart, admittedly the petitioner failed to challenge the determinations under Section 7-A of the Act. The impugned notice being a consequential proceeding, as rightly contended by the learned Counsel for the respondent, the interference under Article 226 of the Constitution of India is not warranted. Though the learned counsel for the petitioner has submitted that since the Tribunal is not functioning, it would be appropriate to entertain the writ petition and to protect the interest of the petitioner for the time being, the learned Standing counsel submits that the said plea is not correct and as a matter of fact, the Tribunal is functioning regularly from 24.11.2004 onwards.

In the circumstances, I do not see any justifiable ground to grant the relief as prayed for and the interference of this Court with the impugned auction notice,

proposing to conduct auction on 05.04.2005 is not at all warranted.

Accordingly, the writ petition is dismissed. However, this shall not preclude the petitioner to challenge the orders passed under section 7-A of the Act by working out the appropriate remedy as available under law. No costs.

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04.04.2005

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To

1 The Regional Provident Fund Commissioner Employees Provident Fund Office, 2nd Floor,
Bhavishyanidhi Bhavan, Barkathpura, Hyderabad.
2 The Assistant Provident Fund Commissioner (Recovery),

Sub-Accounts Office, #12-1, Susheeram Complex,
Patancheru, Medak District.

3 2 CD copies

4 1 CC to MR.SREERAMULU REDDY